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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,260	12/22/2003	Eric C. Steindorf	KCX-771 (19263)	4463
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PATEL, NIHIR B				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
12/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/743,260

Applicant(s)

STEINDORF, ERIC C.

Examiner

NIHIR PATEL

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Petition Decision mailed on 11/12/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 14, 17-19, 21-24, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 12, 13, 15, 16, 20 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Petition Decision

1. The petition filed on September 8th, 2009 which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment is granted.

Response to Arguments

2. Applicant's arguments filed on March 5th, 2009 have been fully considered but they are not persuasive. The applicant states that each independent claims 1 and 12 have been amended to require that the layer with the projections be completely contiguous with the body portion of the face mask. The amended claims 1 and 12 do not recite what the applicant argues. The claims are void on the phrase "completely". Even if the claims did recite the phrase "completely", the applicant has not provided any information on wherein the specification does the limitation "the layer with the projections be completely contiguous with the body portion of the face mask" is recited. After reviewing the specification and as indicated on page 8 of the Board's decision on Appeal, nether applicant's claims nor any portion of applicant's specification require the baffle layer to be completely contiguous with the body portion of the face mask.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims **1-5, 10, 12, 13, 15, 16, 20 and 25** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims contains subject matter specifically, **"extending contiguous with the body portion"**, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims **1-3, 5, 10, 12, 13, 20 and 25** are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (US 6,354,296).

7. **As to claim 1**, Baumann teaches a face mask comprising a body portion **22** configured to be placed over the mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (**see figure 3**) such that the air of respiration is drawn through the body portion, the body portion having a baffle layer **12** extending contiguous with the body portion (**see fig. 10b; col. 7 lines 35-43**) and having an outer and an inner surfaces that define a plurality of channels on the baffle layer configured for

channeling fluid to different locations on the baffle layer (see column 4 lines 45-55), the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through.

8. **As to claim 2**, Baumann teaches a face mask wherein the channels are inter connected and are defined by the projections and the outer surface of the baffle layer, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels (see column 4 lines 45-55 and figures 5a and 5b).

9. **As to claim 3**, Baumann teaches a face mask wherein the body portion has a first layer contacting the projections of the baffle layer; and the body portion has a third layer contacting the inner surface of the baffle layer (see figures 4a and 4b).

10. **As to claim 5**, Baumann teaches a face mask wherein the projections are circular pillows (see figures 5a and 5b).

11. **As to claim 10**, Baumann teaches a face mask wherein the plurality of projections extend from the outer surface of the baffle layer (see figures 4a and 4b; see column 4 lines 10-20).

12. **As to claim 12**, Baumann teaches a face mask comprising a body portion configured to be placed over the mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (see figure 3) such that the air of respiration is drawn through the body portion, the body portion having at least one layer, the layer having an outer surface facing away from the user when worn and an inner surface facing towards the user when worn (see figures 3, 4a and 4b), the layer having a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid

striking the body portion, wherein the projections define a plurality of channels on the layer configured for channeling fluid to different locations on the layer (see column 4 lines 45-55).

13. **As to claim 13**, Baumann teaches a face mask wherein the body portion has an inner facing layer contacting the skin of the user when worn, an outer facing layer, and a filtration media layer disposed between the inner facing layer and the outer facing layer, wherein the layer with the plurality of projections is any one of the inner facing layer, outer facing layer, and filtration media layer (see column 3 lines 55-65).

14. **As to claim 20**, Baumann teaches a face mask wherein the projections are circular pillows (see figures 5a and 5b).

15. **As to claim 25**, Baumann teaches a face mask wherein the plurality of projections extend from the outer surface of the layer having the projections (see figures 5a and 5b).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
18. Claims **4, 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al. (US 6,354,296) in view of Niemeyer (US 4,951,664).
19. **As to claims 4, 15 and 16**, Baumann discloses the applicant's invention as claimed with the exception of providing a first layer/additional layer stiffer than the baffle layer. Niemeyer discloses an apparatus that does provide a first layer/additional layer stiffer than the baffle layer. Therefore it would have been obvious to modify Baumann's invention by providing a first layer/additional layer stiffer than the baffle layer as taught by Niemeyer in order to seal an expanding and contracting perimeter to the skin of the face.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772